

TTAB

16 437341

SMITH & RENDON^{LLP}
ATTORNEYS AT LAW

2222 Martin
Suite 255
Irvine, California 92612-1481
Tel. (949) 474-2231
Fax (949) 260-0940



www.smithrendon.com

December 11, 2006

333 South Grand Avenue
Suite 4200
Los Angeles, California 90071-1546
Tel. (213) 626-9000
Fax (213) 626-2870

Reply To:

Los Angeles

VIA U.S. MAIL – FIRST CLASS

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Motion for Leave to File Amended Answer and Counterclaim to Petition for Cancellation & Amended Answer

Mark: TITAN
Registered: October 18, 2005
Cancellation No.: 92045935
Registrant: NISSAN JIDOSHA KABUSHIKI KAISHA
also trading as NISSAN MOTOR CO., LTD.
Petitioner: TITAN INTERNATIONAL, INC.

Dear Sir:

Enclosed for filing please find the following:

1. Registrant's Motion for Leave to File Amended Answer and Counterclaim to Petition for Cancellation; and
2. Registrant's Amended Answer to Petition for Cancellation, And Counterclaim for Cancellation.

Please charge Deposit Account No. 50-0594 to cover the requisite filing fee. If you have any questions regarding this application, please contact me at (213) 626-9000.

Very truly yours,

PATRICK RENDON

Encls.

12-13-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TITAN INTERNATIONAL , INC.,)	
)	
Petitioner,)	
)	Cancellation No. 92045935
v.)	
)	
NISSAN JIDOSHA KABUSHIKI)	
KAISHA T/A)	
NISSAN MOTOR CO., LTD.,)	
)	
Registrant.)	

**REGISTRANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER AND
COUNTERCLAIM TO PETITION FOR CANCELLATION**

Registrant, Nissan Jidosha Kabushiki Kaisha t/a Nissan Motor Co., Ltd., hereby moves the Board for an order permitting it to file an Amended Answer to the Petition for Cancellation pursuant to Rule 15(a) Fed. R. Civ. P., 37 C.F.R. 2.107, TBMP 507.02 to plead Laches as an Affirmative Defense and to Counterclaim for Cancellation of Petitioner's Registration No. 2933421.

Subsequent to Registrant's filing of its Original Answer, Registrant learned of facts indicating that Petitioner knew or should have known of Registrant's registration and use of the mark for which Petitioner seeks cancellation. Similarly, on November 25, 2006, Registrant first learned that the USPTO appears to have issued one of Petitioner's pleaded registrations with an incorrect and materially overbroad identification of goods. Specifically, whereas on March 27, 1997, Petitioner filed an amendment to its application Serial No. 75/097303 to narrow the goods to "land vehicle parts and components, namely, trailer brakes and brake actuators," the USPTO issued a registration for the following description of goods, "land vehicle parts and components, namely, wheels, rims, tires, brakes and actuators for on-the-road vehicles." If this identification

is not corrected, Registrant will be required to defend the issue of likelihood of confusion based on a materially broader identification and statutory presumptions that are incorrect.

In support of its motion, Registrant notes that the grounds for the Affirmative Defense and the Counterclaim set forth in the proposed Amended Answer of Registrant are based on information Registrant just recently learned.

Pursuant to the Federal Rule of Civil Procedure 15, "leave to amend shall be freely given when justice so requires." The Board has granted leave to amend pleadings with considerable liberality where the amendment does not violate settled law and the circumstances are such that the adverse party is not prejudiced.

Registrant submits that permitting it to amend its Answer will not prejudice Petitioner and that this motion is timely insofar as the Affirmative Defense and the Counterclaim is based on information just recently learned, after the Answer of Cancellation was filed. Further, this case still is in the pretrial stage.

Since the Board proceeding still is in an early pre-trial state, leave to amend should be allowed. See e.g. *Space Base Inc v Stadis Corp*, 17 USPQ2d 1216 n.1 (TTAB 1991). By allowing Registrant to amend its Answer, the Board is permitting full adjudication of the merits in this dispute. The fact that the adverse party may be prejudiced as a result of the delay in the proceeding is generally outweighed by the principle that there should be full adjudication.

Registrant attaches hereto a copy of the proposed amended pleading pursuant to TBMP Section 507.01.

Wherefore, Registrant respectfully requests that this Board grant this Motion for Leave to File the attached Amended Answer and Counterclaim for Cancellation.

Dated: December 11, 2006

Respectfully submitted,

By:

A handwritten signature in cursive script, appearing to read "Rhea Caras", written over a horizontal line.

Rhea Caras

Smith & Rendon, LLP

333 South Grand Avenue, Suite 4200

Los Angeles, CA 90071-1546

Telephone: 213-626-9000

Facsimile: 213-626-2870

Attorneys for Registrant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing REGISTRANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER AND COUNTERCLAIM AND PETITION FOR CANCELLATION has been served on Daniel A. Rosenberg, counsel for Petitioner Titan International, Inc. by mailing said copy on December 11, 2006, via First Class Mail, postage prepaid to:

Daniel A. Rosenberg
Davis, Brown, Koehn, Shors & Roberts, P.C.
The Financial Center
666 Walnut Street, Suite 2500
Des Moines, Iowa 50309



Rhea Caras

CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

Mark: TITAN
Registered: October 18, 2005
Cancellation No.: 92045935
Registrant: NISSAN JIDOSHA KABUSHIKI KAISHA, also trading as
NISSAN MOTOR CO., LTD.
Petitioner: TITAN INTERNATIONAL, INC.

Re: Registrant's Motion for Leave to File Amended Answer and Counterclaim to
Petition for Cancellation

I hereby certify that the above-identified document, which is attached, is being deposited
with the United States Postal Service with sufficient postage as first class mail in an
envelope addressed to:

Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on
December 11, 2006.



December 11, 2006

Patrick Rendon

Date